



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/933,666	08/22/2001	William R. Herrell III	11011-0002	6634

7590 07/12/2004
CLARK & BRODY
Suite 600
1750 K Street, NW
Washington, DC 20006

EXAMINER

NGUYEN, MERILYN P

ART UNIT	PAPER NUMBER
----------	--------------

2171

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/933,666

Applicant(s)

HERRELL, WILLIAM R.

Examiner

Merilyn P Nguyen

Art Unit

2171

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 22 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Detailed Action.

Art Unit: 2171

DETAILED ACTION

1. This application claims priority from provisional patent application no. 60/228,771 filed on August 30, 2000.
2. In response to the communication dated 04/14/2004, claims 1-18 are active in this application.

Acknowledges

3. Receipt is acknowledged of the following items from the Applicant:
The applicant amendment has been considered and made of record as Paper No. 4.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shields (US 2002/0032636), in view of Gakidis (US 2002/0095305).

Regarding claim 1, Shields discloses a method for evaluating performance of an employee comprising the steps of:

- a. issuing shares in each employee (See paragraph [0005], [0009], lines 17-26), and

Art Unit: 2171

b. establishing a market for trading said shares. (See Fig. 9, and [0083, 0084]).

However, Shields is silent as to trading shares of all employees in the market, wherein at least one of the employee's performance can be evaluated based on a value of the traded shares of said one employee. On the other hand, Gakidis teaches trading shares of all employees in the market (Please see [0066], [0081]) and the performance of employee can be evaluated based on the traded shares (Please see [0083], [0089], [0096]). It would have been obvious to one having ordinary skill in the art at the time of the invention was made to evaluate employee based on traded shares. The motivation would have been evaluating the performance of each employee so that the attract interest on different products can be obtained.

Regarding claim 2, Shields/Gakidis discloses a searchable database having a profile for each of a number of employees (See paragraphs [0010], [0039], lines 11-21, and [0047], lines 15-32).

Regarding claim 3, Shields/Gakidis discloses a method of evaluating employees of an enterprise comprising:

- a) generating an electronic personal profile for each employee and storing each profile in a database (See paragraphs [0010], [0039], lines 11-21, and [0047], lines 15-32);
- b) issuing a number of shares for each employee, the shares having a unit value for each employee (See paragraphs [0005], [0049-0050], and [0056]);

- c) establishing a market for buying and selling of the shares wherein employees can only buy or sell shares of other employees (See Figs. 8, 9, and paragraphs [0075]-[0079]); and
- d) identifying at least one job performance trait as part of each buying or selling of shares of each employee (See Figs. 14, 15, and paragraphs [0102, 0103]).
- e) evaluating at least one employee based on at least the traded value of the one employee's shares as addressed above in claim 1.

Regarding claim 4, Shields/Gakidis discloses only a select group or employees or owners has access to the at least one job performance trait identified in step (d) (See Figs. 3, and 18).

Regarding claim 5, Shields/Gakidis discloses the buying and selling is performed using a global worldwide network or a specific area network (See paragraph [0041]).

Regarding claim 6, Shields/Gakidis discloses at least some of the employees update their electronic personal profiles to increase the unit value of their shares (See paragraphs [0054], and Fig. 13).

Regarding claim 7, Shields/Gakidis discloses the unit value is measured in terms of currency, time, an article, or combinations or fractions thereof (See Fig. 7B).

Regarding claim 8, Shields/ Gakidis discloses time is the unit value, and the time is one of vacation time, compensatory time, billable time, non-billable time, sick time, maternity time, and combinations and fractions, thereof (See paragraphs [0078, 0087]).

Regarding claim 9, Shields/ Gakidis discloses buying or selling of shares is done anonymously (See paragraph [0075]).

Regarding claim 10, Shields/ Gakidis discloses the database is searchable to allow employees to search for at least capabilities of other employees (See [0078]).

Regarding claim 11, Shields/ Gakidis discloses each employee has a portfolio of shares comprising shares of at least one employee superior, at least one employee peer, and at least one employee subordinate (See Fig. 7B).

Regarding claim 12, Shields/ Gakidis discloses at least one employee creating a watch list identifying at least one other employee, the one employee being notified when a profile of the at least one other employee is updated (See [0039], lines 11-21).

Regarding claim 13, Shields/ Gakidis discloses a web page accessible for each employee, the web page comprising:

- access to the electronic personal profile of the employee for updating, and monitoring of share performance;
- access to the market for buying and selling of the shares of other employees, and

search capability to access at least information in the electronic personal profile of other employees.

See Figs. 14-23.

Regarding claim 14, Shields/ Gakidis discloses the web page further comprises access to news provided by the enterprise (148, Fig. 2); access to a help program (System help 132, Fig. 2); access to a frequently asked question program (152, Fig. 2); and access to an indices of data sorted by job function (See [0046]).

Regarding claim 15, Shields/ Gakidis discloses a system for evaluating employees of an enterprise comprising:

- a searchable database storing an electronic personal profile of each employee of the enterprise and a number of shares assigned to each employee (See paragraphs [0010], [0039], lines 11-21, and [0047], lines 15-32);
- a market trading system accessible by each employee, the market trading system permitting shares of each employee to be traded by buying or selling when at least one job performance trait associated the employee whose share is being traded is identified by the employee requesting the trade (See Figs. 8, 9, and paragraphs [0075]-[0079], and See Figs. 14, 15, and paragraphs [0102, 0103]), the buying and selling of shares affecting the value of the employee's shares to allow for employee evaluation based on share value as addressed above in claim 1; and
- o a computer allowing each employee access to the searchable database and the market trading system (Finance system 4, Fig. 1).

Regarding claim 16, Shields/ Gakidis discloses the computer accesses the searchable database and market trading system through one of a global network and a local area network and a server (See paragraph [0041]).

Regarding claim 17, Shields/ Gakidis discloses the market trading system requires each trade to be done without revealing the name of the employee trader (See Fig. 9).

Regarding claim 18, Shields/ Gakidis discloses the market trading system generates quotes on shares of the employees based on at least supply and demand for the shares (Quote Server 30, Fig. 1).

Response to Arguments

5. Applicant's arguments filed on 04/14/2004 with respect to claims 1-18 have been fully considered but they are considered moot in view of the new grounds of rejection.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 2171

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marilyn P Nguyen whose telephone number is 703-305-5177. The examiner can normally be reached on M-F: 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on 703-308-1436. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-746-7240 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



MN

June 28, 2004


SAFET METJAHIC
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100